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January 30, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: ***Regulation Z - Proposed Rule, Docket # R-1167***
Regulation B – Proposed Rule, Docket # R-1168
Regulation E – Proposed Rule, Docket # R-1169
Regulation M – Proposed Rule, Docket # R-1170
Regulation DD – Proposed Rule, Docket # R-1171

Dear Ms. Johnson:

Thank you for the opportunity to comment on the proposed changes (the "Proposal") to Regulations Z, B, E, M, and DD (the "Regulations") of the Board of Governors of the Federal Reserve System (the "Board"), implementing the Truth in Lending Act ("TILA"), the Equal Credit Opportunity Act ("ECOA"), the Electronic Funds Transfer Act ("EFTA"), the Consumer Leasing Act ("CLA"), and the Truth in Savings Act ("TISA").

Information about Household Auto

Household Automotive Finance Corporation, OFL-A Receivables Corp., and Household Automotive Credit Corporation (collectively "Household Auto") are issuers of auto-secured consumer loans and purchase motor vehicle retail installment sales contracts from dealers secured by motor vehicles. Household Auto manages over $6.5 billion in auto credit receivables and its customer base totals well over 500,000. Household Auto employs over 2,100 men and women throughout the United States, and maintains credit processing centers in San Diego, California; Lewisville, Texas; and Jacksonville, Florida.

Background Information

The Board is proposing to amend the Regulations in order to provide a uniform definition of the term "clear and conspicuous" among the Board's regulations generally. The Board is proposing to incorporate into these existing and long-standing rules the relatively new "clear

and conspicuous" standards from Regulation P, which implements the privacy disclosure requirements of the Gramm-Leach-Bliley Act. The stated intention of this Proposal is to "help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services." In addition, the preamble expresses the belief that "consistency among the regulations should facilitate compliance by institutions."

The Proposal Should Be Withdrawn

We are greatly concerned that the Proposal would have serious unintended consequences that would negatively affect the entire financial services industry, without benefiting consumers. Financial institutions would be faced with astronomical costs, greatly increased risk of civil liability, and nearly impossible compliance tasks.

We strongly recommend that the Board withdraw the Proposal. If the Board chooses to proceed with this rulemaking process, we encourage the Board to review and revise the Proposal to address any specific regulatory concerns regarding specific consumer disclosures on a case-by-case basis.

Regulation P Standards Do Not Apply to Other Regulations

The "clear and conspicuous" standard in Regulation P is not an appropriate standard for disclosures required by the other Regulations. Regulation P disclosures differ greatly from other disclosures. In a misguided attempt to achieve regulatory uniformity, the proposal fails to provide the flexibility needed to address the variety and complexity of the many disclosures that are required under the various Regulations. The following specific differences between Regulation P and the other Regulations indicate not only that the use of the same standards is inappropriate, but also that different standards would be completely appropriate:

- ✓ Regulation P disclosures describe a financial institution's generally applicable privacy policies; the disclosures required by Regulations B, Z, M, DD, and E generally describe specific terms, financial arrangements, financial computations, or other conditions applicable to a specific transaction.

- ✓ Regulation P disclosures are self-contained and often provided on a separate sheet; many disclosures under the other Regulations must be provided within the context of other information (contract terms, notice of action on an application, descriptions of the disclosures, and many other types of information).

- ✓ Regulation P does not have prescribed format requirements for certain disclosures that are "more conspicuous" than other disclosures, or for disclosures that are "material." Regulation P does not have requirements relating to disclosures that

must be segregated from other disclosures. Many of the disclosure requirements in the other Regulations already contain specific format and design requirements that would be rendered unclear and confusing under the Proposal.

- ✓ Regulation P does not have specific language content that must be provided, like the ECOA disclosure notice required by §202.9(b)(1) of Regulation B.

- ✓ Regulation P disclosures do not include terms that are already specifically defined in the Regulations, such as the annual percentage rate, amount financed, adverse action, finance charge, and many other terms.

- ✓ Regulation P disclosures do not constitute advertisements. Tellingly, if a financial institution decides to advertise its privacy practices, there are absolutely no Regulation P disclosure requirements applicable to such an advertisement. In contrast, Regulation Z has specific advertisement disclosures. Applying the prescriptive Regulation P standards to credit advertisements is therefore highly inappropriate.

- ✓ Regulation P does not provide for a private right of action.

- ✓ Regulation P was developed jointly with other regulatory agencies; identical regulations apply to financial institutions other than creditors or deposit-taking financial institutions. The disclosure standards in broadly applicable regulations should not apply to specific disclosures tailored to a portion of the financial services industry.

As these examples show, Regulation P is separate and distinct from the other Regulations. The disclosures under Regulation P are completely different. Standards applicable to the one do not logically apply to the others.

Uniformity is Unnecessary for these Regulations

We appreciate the goal of uniformity in general. However, uniformity in method is not needed in order to have uniformity in result. The goal the Board would like to achieve is a uniform result. The standards of current law already result in consumers receiving "noticeable" and "understandable" disclosures about consumer financial products and services. That is, current law already achieves the purported goal of the Proposal. The Proposal presents no evidence that consumer financial disclosures are unnoticeable or not understandable.

The Board specifically acknowledges that the Regulations contain similar standards for providing disclosures that consumers will notice and understand. Regulations B, M, and Z

currently require that their disclosures be "reasonably understandable." Regulation E requires disclosures to be "clear and readily understandable." Regulation DD requires that consumers "readily understand" the disclosures. Regulation P requires that disclosures be "reasonably understandable and designed to call attention to the nature and significance of the information." All of these standards result in disclosures that are "noticeable" and "understandable." These standards are highly similar. Identical standards are not required in order to ensure noticeable and understandable disclosures.

We respectfully disagree that "consistency among the regulations should facilitate compliance by institutions." In this case, there is absolutely nothing about consistency in regulations that facilitates compliance, because all of the regulations require a variety of different disclosures in a variety of different ways. Preparing a disclosure of the "amount financed" under Regulation Z and a disclosure of the categories of nonpublic personal information that a financial institution collects are two totally separate tasks. Identical standards are not necessary.

The Detailed Standards of the Proposal are Unnecessary and Unhelpful

The Proposal goes well beyond its stated purpose. In particular, the second component of the proposed standard – "designed to call attention to the nature and significance of the information in the disclosure" – is a radical addition to the current requirements in the Regulations, and is not necessary in order to achieve disclosures that are noticeable and understandable. This standard may be helpful for statements of privacy practices, but it is unnecessary for disclosures of terms that are already specifically defined in the Regulations, such as "finance charge," "annual percentage rate," "adverse action," and similar terms. The Regulations have long-standing disclosure requirements – some dating to 1968 – that do not require additional complexity.

The Proposal is a radical revision of current disclosure standards applicable to the Regulations. Specifically, the Proposal would institute 28 new and ambiguous requirements relating to the following:

a) length of sentences
b) bullet lists wherever possible
c) use of everyday words
d) use of active voice
e) avoiding multiple negatives
f) avoiding legal terminology
g) avoiding technical terminology
h) avoiding imprecise explanations
i) use of plain language in headings
j) use of headings

k) typeface
l) type size
m) wide margins
n) ample line spacing
o) use of boldface
p) use of italics
q) key words in boldface or italics
r) distinctive type size
s) distinctive type style
t) use of graphic devices
u) use of shading
v) use of sidebars
w) contractual provisions may render disclosures not clear and conspicuous
x) explanation of contract terms may render disclosures not clear and conspicuous
y) state disclosures may render disclosures not clear and conspicuous
z) translations may render disclosures not clear and conspicuous
aa) promotional material may render disclosures not clear and conspicuous
bb) provide a description of codes or symbols

We respectfully disagree with the assertion that the standard expressed in Regulation P "articulates with greater precision" the duty to provide disclosures that consumers will notice and understand. Ironically, the Proposal sets forth many new requirements, but these new requirements would only create additional confusion, imprecision, and disagreement in interpreting what the new requirements actually require creditors to do. The new requirements provide 28 different reasons why a disclosure might not be "clear and conspicuous," without providing any clarity as to how to comply with the 28 new requirements. As a result, the 28 new requirements are unhelpful and potentially harmful.

An example of the imprecision that would created by the Proposal is the requirement for bullet lists "wherever possible." Almost any sentence or phrase with a series or a conjunction would allow for the "possibility" of a bullet list. Creditors would have to guess which disclosures should be in bullets and which disclosures don't require bullets. The only completely safe path for creditors would be to create disclosures filled with bullets, wherever possible, even if logic and common sense were to suggest otherwise.

Among other Unintended Consequences, the Proposal Would Greatly Increase the Risk of Assignee Liability under TILA

TILA currently provides, in general, that an assignee of another creditor may be liable for any TILA violations of the assignor if the violation is "apparent on the face of the disclosure statement" (TILA, §131). This requirement impacts financial institutions which take assignments of consumer credit agreements from other creditors, like auto finance companies

which take assignments of motor vehicle retail installment sales contracts from motor vehicle dealers. Auto finance companies (like Household Auto) have a risk of TILA liability based on the separate conduct of motor vehicle dealers, which can be evaluated by reviewing TILA disclosures prior to accepting assignments, in order to ascertain if there are any apparent TILA violations. The Proposal would have the result of greatly expanding the responsibility of auto finance companies and other assignees, and their consequent risk of liability. Indeed, because every motor vehicle dealer may have many different ideas about how to apply the new standards, auto finance companies would find themselves having to make hundreds – if not thousands – of subjective judgments every day.

As a result, the Proposal goes beyond merely imposing imprecise and broad standards on creditors in general; it shifts liability for violating these difficult and imprecise standards to completely innocent third parties. The liability shift may be reasonable and appropriate in light of the disclosure standards that creditors have met for decades, but is unreasonable when applied to new, complex, and imprecise disclosure standards.

In contrast to the liability-shifting paradigm applicable to assignees under TILA, it is highly relevant that the Gramm-Leach-Bliley Act and Regulation P ***do not*** impose liability on assignees for a GLB or Regulation P violation of the assignor. Regulation P specifically provides that a privacy statement is to be provided when a customer relationship is established, and essentially permits an assignee to provide its own privacy statement within a reasonable time after the assignment of the account. If the assignor has failed to comply with the "clear and conspicuous" standard of Regulation P, that failure is not the responsibility of the assignee. The privacy statement of the assignor is irrelevant to the assignee. Therefore, the more complex "clear and conspicuous" standard of Regulation P is not appropriate for Regulations under other statutes, including TILA, where innocent parties may be held liable for disclosure violations.

The Proposal Would Require Significant Changes to Disclosures

Moreover, because these changes could mandate the revision of virtually every document, advertisement, or page on a financial institution's website that are sent or used by consumers, the costs to the financial services industry are potentially enormous, and should well exceed the Board's estimate under the Paperwork Reduction Act that "the revisions would not increase the paperwork burden of creditors."

In this section of the Proposal, the Board estimates that the proposed definitional changes will create no annual cost burden on the banks affected by the changes. We respectfully disagree. As written, the new language effectively includes minimum typeface sizes, increased margins, and other requirements that would likely lengthen every printed disclosure made to consumers. Added length requires added paper at an additional cost. Additional paper creates additional weight, which requires additional postage. It is quite possible, therefore,

that the proposed changes could result in costs to the industry measuring in the billions of dollars.

Another serious problem with the Proposal is that it does not even specify what is a "disclosure" subject to the new standards. For example, §226.24(a) of Regulation Z requires that if an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor. It might appear that the Proposal would require all actually available terms to be disclosed in all advertisements in accordance with the new disclosure standards. This potential requirement is vague, ambiguous, and uncertain, and would lead to complex and lengthy credit advertisements with little benefit to consumers.

The Proposal Would Greatly Increase the Risk of Expensive and Uncertain Litigation

The compliance costs are compounded by the potential litigation exposure that could result from the elimination of decades of jurisprudence concerning disclosure standards under the Board's Regulations, as well as the likelihood that different judges will interpret 28 different new requirements in multiple and diverse ways. We strongly urge the Board not to create a new genre of class action litigation over mere format and design standards that have nothing to do with noticing or understanding disclosures.

Thank you again for the opportunity to comment on this proposal.

Sincerely yours,

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